

## **REMARKS**

Claims 1-3 and 5-23 remain in this application. Claim 4 has been canceled without prejudice or disclaimer.

In the Office Action, the Examiner rejected Claims 1-10 and 21-23 under 35 U.S.C. §112, second paragraph. Claim 21 has been amended to recite the longitudinal and transverse axes to overcome the §112 rejection. Claims 21-23 are now believed in condition for allowance.

Claims 1 and 3-10 were rejected under 35 U.S.C. §102(e) as being anticipated by Mazzochi, et al (U.S. Patent No. 6,605,102); claims 1, 2, 4, 5 and 7-10 were rejected under 35 U.S.C. §102(e) as being anticipated by Samson, et al. (U.S. Patent No. 6,066,149); claims 1 and 2 were rejected under 35 U.S.C. §102(b) as being anticipated by Bates, et al. (U.S. Patent No. 6,348,056); claims 1, 3, 4, 6-13 and 15-20 were rejected under 35 U.S.C. §102(b) as being anticipated by WO 01/45590 – Zadno-Azizi; and claims 2 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over ‘590 Zadno-Azizi.

Claim 1, as amended, recites a distal protection device comprising a catheter having a first strut movable from a collapsed configuration to an expanded configuration and a second strut axially spaced from the first strut and movable from a collapsed configuration to an expanded configuration. The first strut has a first dimension and the second strut has a second dimension larger than the first dimension. The first and second struts are separately deployable, wherein movement of the first strut deploys attached filtering material to a first position having a first deployed dimension and movement of the second strut deploys attached filtering material to a second deployed dimension larger than the first deployed dimension. In the deployed position, the first and second struts each form a loop, the loops being axially spaced from one another and positioned so a long axis passes through the opening in both loops and lie in a plane substantially transverse to a longitudinal axis of the catheter and substantially transverse to a direction of blood flow.

Claim 1 patentably distinguishes over the prior art. The Mazzocchi patent Figures 13 and 14, referenced by the Examiner, disclose a basket 320 and a cover 340. The cover 340 is deployed by passing it out of catheter C and opens distally rather than proximally like basket 320. The cover is not directly affixed to the guidewire at any point but is instead slidable along the guidewire. It is controlled by movement of the hypotube relative to the guidewire. Once the

basket has been used to filter objects, the cover is deployed and the basket is drawn proximally in the cover to be substantially enclosed therein. Mazzocchi fails to disclose inter alia first and second struts to deploy filtering material. Only one filter, basket 320, is disclosed. Further, it fails to disclose or suggest first and second loops formed by struts which are positioned so a long axis passes through the opening in both loops and which lie in a substantially transverse plane as recited in claim 1. Thus, Applicants submit claim 1 distinguishes over Mazzochi.

The Samson patent discloses in Figure 3A a proximal cage assembly 224 composed of a woven braid of ribbons. Distal filter assembly 230 has petal shaped wires 232 and optional spacer wires 234. Samson fails to disclose first and second loops formed by struts which are positioned so a long axis passes through the opening in both loops and lie in a plane substantially transverse to a longitudinal axis of the catheter and substantially transverse to a direction of blood flow. Also, the assembly is not attached to a filter material.

In the Bates patent retrieval assembly 20, having proximal portion 22 and distal portion 24 as shown in Figures 5A and 5B, the legs are convex and bow out to form a bulbous shape (col. 8, lines 7-11), thus lacking the loop orientation recitations of the present invention defined in claim 1.

With respect to the Zadno-Azizi patent, the slitted sections controlled by the pull wire deploy laterally such that they extend in a lengthwise direction. This is different from the orientation of the loops recited in claim 1 which better assures filtering. Zadno-Azizi, like the other cited art discussed above, neither discloses nor suggests such configuration. Therefore, the anticipation (and obviousness) rejections of claim 1 should be withdrawn.

Claims 2-3 and 5-10 depend directly or indirectly from claim 1 and therefore are believed patentable for at least the same reasons as claim 1. Withdrawal of these rejections are respectfully requested.

Independent claim 11 recites a distal protection device comprising a tube having a longitudinal axis and a plurality of cutouts forming at least one distal elongated strut and at least one proximal elongated strut. The struts are movable from a retracted to an expanded position and filter material overlies at least a portion of the struts. An actuating member is operatively connected to a portion of the tube wherein movement of the actuating member moves the portion of the tube to thereby move the at least one distal elongated strut and the at least one proximal elongated strut to the expanded position, wherein in the expanded position each of the struts forms a loop having an opening substantially in line with the direction of blood flow. Zadno-

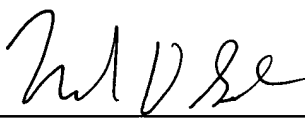
Azizi's Figures 13 and 14 fail to disclose this feature as the struts extend along the longitudinal axis and the space formed by the struts is transverse, not in line with, the direction of blood flow. Consequently, the rejection of claim 11 should be withdrawn.

Claims 12-20 depend directly or indirectly from claim 11 and therefore are believed patentable for at least the same reasons as claim 11. Moreover, these claims contain features not disclosed or suggested in Zadno-Azizi. For example, claim 13 recites further movement of the actuating member in the first direction subsequently expands the second of the elongated struts. In contrast, in the embodiment of Figure 25 of Zadno-Azizi, when core wire 1310 is pulled, both the first and second struts systems 1400, 1420 expand; in Figure 26, a double actuation system comprising a hypotube 1430 and core wire 1310 is used to expand the respective strut system. Another example is independent claim 14 reciting proximal and distal struts of different lengths, further distinguishing over Zadno-Azizi.

Prompt and favorable reconsideration of the present application is respectfully requested. The Examiner is invited to contact the undersigned should the Examiner believe it would expedite prosecution.

Respectfully submitted,

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By:   
Neil D. Gershon  
Reg. No. 32,225  
Attorney for Applicant

Neil D. Gershon  
Rex Medical, L.P.  
1011 High Ridge Road  
Stamford, CT. 06905  
(203) 329-8750